

EXHIBIT 1

WWE 2K Survey Report

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JAY

SURVEY

STRATEGICS

Table of Contents

I.	Introduction and Summary
II.	Credentials
III.	Findings
IV.	Conclusions
Appendix A –	Deposition and Trial Testimony During the Past Four Years
Appendix B –	Resume and Publications and Presentations Since 2009
Appendix C –	Materials Considered
Appendix D –	Questionnaire (Sample Web Screenshots)
Appendix E –	Jay Survey Methods
Appendix F –	Background Information on the YouGov Online Panel
Appendix G –	Background Information on the Research Now/SSI Online Panel
Appendix H –	Main Reasons and Other Reasons Survey Respondents Gave for Buying a WWE 2K Video Game
Appendix I –	Which Wrestlers' Depiction Was a Reason for Buying a WWE 2K Video Game and What Features or Aspects of Their Appearance Were Important to Depict

Report of E. Deborah Jay, Ph.D.

I. Introduction and Summary

I am a principal and founder of Jay Survey Strategies LLC, a California research firm that specializes in providing survey design, sampling, data collection and statistical analysis. Jay Survey Strategies was retained on behalf of 2K Games, Inc. and Take-Two Interactive Software, Inc. to conduct a survey with a nationwide representative sample of individuals age 16 to 55 who had bought a WWE 2K16, WWE 2K17, or WWE 2K18 video game (hereafter "the relevant WWE 2K video games").¹ The purpose of the Jay Survey was to determine the reasons for buying the relevant WWE 2K video games and whether Randy Orton's tattoos were one of the reasons why consumers bought these games.²

As described in more detail in the discussion that follows, none of the survey's respondents said that they bought these games because of Randy Orton's tattoos, much less the tattoos at issue in this case.

A. Summary of Methodology

Under Jay Survey Strategies' design, direction and supervision, YouGov, a full-service market research firm, administered the Jay Survey over the Internet between November 2, 2018 and November 28, 2018. The individuals who were screened for eligibility and interviewed for the Jay Survey were randomly selected from two online panels that are representative of all individuals

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- 1 Jay Survey Strategies is performing this study on a time and materials basis. Because work in connection with this project is ongoing, I do not yet know the total project costs. The hourly rate that Jay Survey Strategies is charging for my time on this project in 2019 is \$650. Jay Survey Strategies' compensation is not dependent on the outcome of this litigation.
 - 2 Individuals age 16 to 55 were surveyed because I understand that most buyers of WWE 2K video games are in this age group.

age 16 and older in the U.S.: a) the online panel maintained by YouGov and b) the online panel maintained by Research Now/SSI, another full-service market research agency. The YouGov panel includes approximately 2.0 million persons in the U.S., and the Research Now/SSI panel includes approximately 10 million persons in the U.S.³ Each person who was randomly-selected from these panels and invited to participate in the Jay Survey was provided with a unique link to the survey, so that no person could participate in the survey more than once.⁴

Eligibility Criteria

To be eligible for the Jay Survey, individuals had to be age 16 to 55 and they had to have bought one or more of the following WWE 2K video games in the past 3 years: WWE 2K16, WWE 2K17, and/or WWE 2K18. Qualifying survey respondents also had to agree to answer all survey questions on their own, without asking anybody else for help or referring to reference materials or the Internet, and they could not live in a household in which someone worked for a video game company or video game store, or for an advertising agency or marketing research firm.⁵ In all, 18,127 randomly-selected individuals age 16 to 55 were screened for eligibility and, of these, 418 individuals (2%) qualified for the Jay Survey (*i.e.*, they had bought one or more of the relevant WWE 2K video games, and they did not work for a video game company or video game store, or for an advertising agency or marketing research firm).⁶

3 Background information on the YouGov and Research Now/SSI online panels is included in Appendix F and Appendix G, respectively.

4 The IP address and other information in the panel databases also were checked to ensure that the sample did not include duplicate respondents.

5 This is because these survey respondents might have special knowledge about the subject of the survey – namely, reasons for buying video games.

6 According to the *Reference Guide on Survey Research, Federal Reference Manual on Scientific Evidence*, 3rd Ed. (2011), probability sample confidence intervals provide a rough indicator of the value of estimates based on Internet surveys, such as this one. The maximum sampling error for analyses based on a probability sample of 418 survey respondents is approximately +/- 5 percentage points at the 95% confidence level. Note, the maximum sampling error is based on percentages in the middle of the sampling distribution (percentages around 50%). Percentages at either end of the sampling distribution (for example, percentages less than 10% or greater than 90%) will have a smaller margin of error.

Questions for Qualified Survey Respondents

The 418 survey respondents who qualified for the Jay Survey were asked up to four sets of questions about the relevant WWE 2K video games, which included open-ended questions (questions that required respondents to answer in their own words) and closed-ended questions (questions that required respondents to select from a set of response categories). The first set of questions asked survey respondents to describe in their own words the main reason why they bought the relevant WWE 2K video games, and their other reasons, if any, for buying these games.

The second set of questions asked survey respondents about 22 possible reasons for buying a WWE 2K video game: a) I or a family member likes wrestling, b) the ease of gameplay, c) the speed of gameplay, d) the size of the player roster, e) the inclusion of wrestling legends and NXT wrestling stars, f) the fighting style options, g) the choice of match types, h) the ability to customize matches (such as win conditions or match rules), i) the selection of movesets, j) the reversal system, k) the cut scenes, l) the backstage action, m) the commentary, n) the dialogue options, o) the music, p) the depiction of the wrestlers' movements, q) the depiction of the wrestlers' face, body or other aspects of their appearance, r) the overall quality of the graphics, s) the camera angles during gameplay, t) the crowd animations, u) the different arenas, and v) the price/value.⁷ Survey respondents were asked to indicate which of these items, if any, were a reason why they bought the relevant WWE 2K video games. They also were asked to indicate which item was their most important reason and which item was their next most important reason for buying the relevant

7 The list also included a fictitious feature, the "TJBD feature," which was created by randomly generating four letters. Survey respondents were asked whether they bought a WWE 2K16, WWE 2K17, and/or WWE 2K18 video game because of the TJBD feature (even though WWE 2K video games do not have this feature). The purpose of the fictitious feature was to measure the amount of guessing or "noise" in the Jay Survey. A question about a fictitious feature or "control question" is an accepted method for measuring the amount of guessing or "noise" in a survey.

WWE 2K video games. The order in which the items were listed was randomized across survey respondents.⁸

Survey respondents who said the depiction of the wrestlers' face, body or other aspects of their appearance was a reason for buying the relevant WWE 2K video games were asked a third set of questions. These survey respondents were asked whether the depiction of the appearance of particular wrestlers was a reason for buying the relevant WWE 2K video games, and, if so, which wrestlers' depiction was a reason for buying these games. The purpose of the third set of questions was to determine whether the depiction of Randy Orton's appearance was a reason for buying the relevant WWE 2K video games.

Survey respondents who identified one or more wrestlers whose appearance they thought was important to depict were asked a fourth set of questions. These survey respondents were asked whether there were particular features or aspects of the appearance of the wrestlers they identified that were important to depict, and, if so, what features or aspects of these wrestlers' appearance were important to depict. The purpose of the fourth set of questions was to determine whether Randy Orton's tattoos were a reason why survey respondents bought the relevant WWE 2K video games.

The Jay Survey was double-blind; neither the persons administering the survey nor the survey respondents were told: a) the names of the sponsors of the survey, b) that the survey was intended to determine the reasons for buying the relevant WWE 2K video games and whether Randy Orton's tattoos were a reason for buying these video games, or c) that the survey was being conducted in connection with litigation.

The Jay Survey was performed according to accepted survey standards and in conformity with the guidelines discussed in the *Federal Manual for Complex Litigation*, 4th Ed. §11.493

⁸ The randomization of the order of the items minimized the potential for the order of the items to influence the survey responses (known as "order effects" or "order bias").

(2004) and the *Reference Guide on Survey Research, Federal Reference Manual on Scientific Evidence*, 3rd Ed. (2011). The survey population was properly defined as individuals age 16 to 55 who had bought a WWE 2K16, WWE 2K17, and/or WWE 2K18 video game in the past 3 years, and the sample selected was representative of that population. The questions asked in the Jay Survey were clear and not leading. The data gathered for the Jay Survey were accurately reported, and the data were analyzed in accordance with accepted statistical principles. The Jay Survey was conducted, under my direction, by survey research professionals following proper survey procedures, and the entire process was conducted so as to ensure objectivity.

B. Summary of Findings and Conclusions

As described in more detail in this report, the Jay Survey found:

B1. Reasons for Buying a WWE 2K Video Game (Unaided Recall)

1. When asked to describe in their own words their main reason and their other reasons for buying the relevant WWE 2K video games, survey respondents were most apt to say that they bought the relevant WWE 2K video games because they like WWE, wrestling, wrestling video games, and/or the WWE 2K franchise (48%).
2. None of the survey respondents referred to the tattoos on any of the wrestlers or even mentioned Randy Orton.

B2. Reasons for Buying a WWE 2K Video Game (Aided Recall)

3. When given a list of possible reasons for buying a WWE 2K video game, most (85%) of the survey respondents selected more than one reason. The average number of reasons that survey respondents selected was approximately 7 and the median was 6.
4. In response to the closed-ended questions, survey respondents were most apt to indicate that they bought the relevant WWE 2K video games because they or a family member likes wrestling (56%).
5. Approximately 32% of the survey respondents indicated that the depiction of the wrestlers' face, body or other aspects of their appearance was a reason for buying

the relevant WWE 2K video games.⁹ Yet, only three persons (less than 1% of the survey respondents) said tattoos were an important feature of the appearance of certain wrestlers, and none of these survey respondents said it was important to depict Randy Orton's tattoos or even mentioned Randy Orton's tattoos.

B3. Most Important Reason (Aided Recall)

6. When given a list of reasons to choose from, the largest percentage of survey respondents (32%) indicated that their most important reason for buying the relevant WWE 2K video games was that they or a family member likes wrestling.
7. Only 3% of the survey respondents indicated that their most important reason for buying the relevant WWE 2K video games was the depiction of the wrestlers' face, body, or other aspects of their appearance.

B4. Top Two Reasons for Buying a WWE 2K Video Game (Aided Recall)

8. In response to the closed-ended questions, survey respondents also were most likely to indicate that their fondness for wrestling was one of their top two reasons for buying the relevant WWE 2K video games. Approximately 40% of the survey respondents said that their most important reason or their next most important reason for buying the relevant WWE 2K video games was that they or a family member likes wrestling.
9. Only 6% of the survey respondents said that their most important reason or their next most important reason for buying the relevant WWE 2K video games was the depiction of the wrestlers' face, body, or other aspects of their appearance.¹⁰

B5. Whether the Depiction of the Appearance of Particular Wrestlers Was a Reason for Buying a WWE 2K Video Game

10. Approximately 20% of the survey respondents said the depiction of the appearance of particular wrestlers was one of the reasons why they bought the relevant WWE 2K video games.

9 When given a list to choose from, 10% of the survey respondents indicated that the fictitious TJBD feature was a reason for buying the relevant WWE 2K video games. This means that approximately 10% of the survey respondents were guessing when they indicated an item was a reason for buying these games. To eliminate guessing, the percentage who selected each item should be reduced by 10 percentage points. In other words, 22% of the survey respondents (32% minus 10%) said the depiction of the wrestlers' face, body or other aspects of their appearance was a reason for buying the relevant WWE 2K video games after accounting for guessing and other sources of "noise."

10 Only 2% of the survey respondents indicated that the fictitious TJBD feature was their most important reason or their next most important reason for buying the relevant WWE 2K video games. This means that a negligible number of survey respondents guessed when asked their top two reasons for buying these games.

11. When asked which wrestlers' appearance was important to depict, these survey respondents named many different wrestlers. But only four persons (less than 1% of the survey respondents) said Randy Orton's appearance was one of the reasons why they bought the relevant WWE 2K video games.¹¹

B6. Whether It Was Important to Depict Particular Features or Aspects of Certain Wrestlers' Appearance

12. Approximately 12% of the survey respondents said that it was important to depict particular features or aspects of certain wrestlers' appearance. Yet, when asked which particular features of these wrestlers' appearance were important, no person mentioned Randy Orton's tattoos.¹²
13. Only two persons (less than 1% of the survey respondents) said that it was important to depict a particular feature or aspect of Randy Orton's appearance, and neither of these survey respondents mentioned Randy Orton's tattoos.¹³

Based on the overall design and execution of the Jay Survey, it provides representative and reliable information regarding individuals age 16 to 55 who bought the relevant WWE 2K video games. In my opinion, the Jay Survey strongly supports the conclusions that a) consumers bought the relevant WWE 2K video games for numerous reasons, principally that they like WWE or wrestling, b) no consumers bought the relevant WWE 2K video games for Randy Orton's tattoos, let alone the tattoos at issue in this case, and c) there is no link between the sales of the WWE 2K video games and their depiction of Randy Orton's tattoos.

The findings of the Jay Survey and my conclusions are described in more detail in the remainder of this report, which is based on information that I have been provided and analyses that

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- 11 The four survey respondents who mentioned Randy Orton only did so at the end of the survey after they were prompted to identify the names of particular wrestlers. None of these survey respondents mentioned Randy Orton when they were initially asked their main reason and their other reasons for buying a WWE 2K game. Further, the four survey respondents who identified Randy Orton after prompting did not say that Randy Orton's tattoos were one of the reasons why they bought the relevant WWE 2K games or even mention Randy Orton's tattoos. These survey respondents indicated an average of 14 reasons for buying a WWE 2K game in response to the closed-ended questions.
- 12 Less than 1% of the survey respondents (only three persons) said tattoos were an important feature of the appearance of certain wrestlers. Two of these survey respondents said that it was important to depict Brock Lesnar's tattoos, and one survey respondent said that it was important to depict all of the wrestlers' facial expressions and tattoos, but did not explicitly mention Randy Orton.
- 13 Both of these survey respondents said that it was important to depict Randy Orton's moves.

I have performed thus far.¹⁴ I understand that I may be provided with additional information or asked to perform further analyses. If so, this report may be amended or revised.

II. Credentials

I am a principal and founder of Jay Survey Strategics LLC, a California research firm that specializes in providing survey design, sampling, data collection and statistical analysis. I have more than 40 years of experience conducting large-scale surveys of all types (*e.g.*, mail, Internet, telephone, and in-person), including surveys for public agencies, nonprofit organizations, private companies and law firms. During my career, I have designed and directed well over 800 surveys and more than 400 surveys in legal cases. I have testified on behalf of plaintiffs and defendants in proceedings before state and federal courts and other tribunals (such as the U.S. Patent and Trademark Office and the U.S. International Trade Commission) in numerous cases, and routinely have been qualified by courts as an expert in survey methodology.¹⁵ I also have lectured on litigation surveys and survey methods before bar associations, trade associations, and business and law schools, and been on the faculties of numerous continuing legal education programs.

I am past chair of the Council of American Survey Research Organizations (CASRO), a not-for-profit trade association representing more than one hundred commercial survey research companies in the United States, and I chaired the Standards Committee for the American Association for Public Opinion Research, a professional society of over 2,000 individuals engaged in opinion research, market research, and social research at public agencies, nonprofit

14 The materials I considered in forming my opinions are described in Appendix C; screenshots showing how the questionnaire appeared on the computer are in Appendix D; and a detailed description of the methods used to conduct the Jay Survey is in Appendix E.

15 Appendix A includes a list of cases in which I have testified in deposition and/or at trial during the past four years, and Appendix B includes my resume and a list of publications and presentations I have authored (or coauthored) during the past 10 years.

organizations and private companies.¹⁶ I have served on the editorial board of several journals, and my publications include articles in the *Trademark Reporter*, the *Encyclopedia of Survey Research Methods*, *Polling America: An Encyclopedia of Public Opinion*, and *Trademark and Deceptive Advertising Surveys: Law, Science and Design*.

I hold a bachelor's degree in psychology and political science from the University of California at Los Angeles (magna cum laude) and a master's degree and doctorate in political science from the University of California at Berkeley. Before founding Jay Survey Strategies, I served for 23 years as President and CEO of Field Research Corporation, the highly-respected marketing and opinion research firm started by Mervin Field in 1945. When I was President and CEO of Field Research, we conducted over 100,000 interviews per year with representative samples of the public, consumers, corporate executives, and other populations. Field Research also conducted the nationally-quoted *Field Poll*, which tracked voter preferences in all major statewide elections in California.¹⁷ I also have been a program director at SRI International (formerly Stanford Research Institute), a manager with KPMG Peat Marwick in San Francisco, and a research associate at the Survey Research Center at the University of California at Berkeley.

III. Findings

This section describes the findings from the Jay Survey. The verbatim responses to the open-ended questions are in Appendix H and Appendix I.

¹⁶ CASRO merged with the Marketing Research Association (the MRA) in January 2017 to form the Insights Association.

¹⁷ During my tenure, the average deviation between *The Field Poll's* final pre-election poll in California and the actual percentage vote in California for the winning candidate in elections for President, Governor and U.S. Senate was approximately two percentage points, and the *Field Poll* received an A+ rating for accuracy from the highly-respected statistician Nate Silver on his www.fivethirtyeight.com website.

A. Which WWE 2K Video Games Survey Respondents Bought

As shown in Table 1, 61% or more of the survey respondents had bought each of the relevant WWE 2K video games.

Table 1 Which WWE 2K Video Games Survey Respondents Had Bought*	
	Percent of Survey Respondents
	(n = 418)
WWE 2K16	61%
WWE 2K17	70
WWE 2K18	69

* Based on Question S8. Note, percentages add to more than 100% because some survey respondents bought more than one WWE 2K video game.

A little over one-third (36%) of the survey respondents had bought all three of the relevant WWE 2K video games, and almost two-thirds (63%) had bought two or more of the relevant WWE 2K video games. (See Table 2.)

Table 2 How Many of the Relevant WWE 2K Video Games Survey Respondents Had Bought*	
	Percent of Survey Respondents
	(n = 418)
One	37%
Two	27
Three	36

* Based on Question S8.

B. Reasons for Buying a WWE 2K Video Game (Unaided Recall)

Survey respondents were asked the following open-ended questions: "What was the main reason why you bought the following WWE 2K video game(s): WWE 2K16, WWE 2K17 and/or WWE 2K18?" and "What were the other reasons, if any, why you bought the following WWE 2K video game(s): WWE 2K16, WWE 2K17, and/or WWE 2K18?"¹⁸ Survey respondents' answers to

¹⁸ Survey respondents' verbatim responses to these questions are in Appendix H.

these questions are summarized in Table 3. In response to the open-ended questions, the largest percentage (48%) of survey respondents volunteered that they bought the relevant WWE 2K video games because they like WWE, wrestling, wrestling video games, and/or the WWE 2K franchise. Only 3% of the survey respondents said that the games' realism or life-like characters was their main reason or another reason for buying the relevant WWE 2K video games. None of the survey respondents referred to the tattoos on any wrestlers or even mentioned Randy Orton.

Table 3 Main Reasons and Other Reasons Why Survey Respondents Bought a WWE 2K Video Game (Unaided Recall)*	
	Percent of Survey Respondents
	<i>(n = 418)</i>
I like WWE, wrestling, wrestling video games, and/or the WWE 2K franchise	48%
The quality of gameplay/it's a fun or challenging game	29
My friends or family like wrestling or wanted this game	22
Has my favorite wrestlers, like the wrestlers/characters	15
The price/value	9
It's a multiplayer game, wanted to play the game with friends	8
The graphics	7
The games' realism or life-like characters	3
The wrestlers' tattoos	0
Mentioned Randy Orton	0
Mentioned other wrestlers (e.g., Stone Cold Steve Austin, AJ Styles)	4
Misc. other responses (e.g., it was A-list rated, wanted to upgrade)	29
Don't know	7

* Based on Questions A1 and A2. Note, percentages add to more than 100% because some survey respondents volunteered more than one reason for buying a WWE 2K video game.

C. Reasons for Buying a WWE 2K Video Game (Aided Recall)

The next set of questions asked survey respondents about 22 possible reasons for buying a WWE 2K video game: a) I or a family member likes wrestling, b) the ease of gameplay, c) the speed of gameplay, d) the size of the player roster, e) the inclusion of wrestling legends and NXT wrestling stars, f) the fighting style options, g) the choice of match types, h) the ability to customize matches (such as win conditions or match rules), i) the selection of movesets, j) the reversal system,

k) the cut scenes, l) the backstage action, m) the commentary, n) the dialogue options, o) the music, p) the depiction of the wrestlers' movements, q) the depiction of the wrestlers' face, body or other aspects of their appearance, r) the overall quality of the graphics, s) the camera angles during gameplay, t) the crowd animations, u) the different arenas, and v) the price/value. The list of possible reasons also included a fictitious feature, "the TJBD feature," which was created by randomly generating four letters. Survey respondents were asked whether they bought the relevant WWE 2K video games because of the TJBD feature (even though WWE 2K video games do not have this feature). The purpose of the fictitious feature was to measure the amount of guessing or "noise" in the Jay Survey. The order in which the items were listed, including the fictitious feature, was randomized across survey respondents.

As shown in Table 4, when given a list of possible reasons for buying a WWE 2K video game, most of the survey respondents (85%) selected more than one reason, and almost half (49%) selected six or more reasons.

Table 4 Number of Items Survey Respondents Checked, When Given a List of Possible Reasons for Buying a WWE 2K Video Game (Aided Recall)*	
	Percent of Survey Respondents
	<i>(n = 418)</i>
One	12%
Two or three	20
Four or five	16
Six to nine	24
Ten or more	25
<i>Not applicable – Did not know the reasons why they bought a WWE 2K video game or did not select any of the reasons listed</i>	3

* Based on Question B1.

The average (mean) number of reasons that survey respondents selected was 7, and the median was 6. (See Table 5.)

Table 5 Mean and Median Number of Reasons Survey Respondents Checked, When Given a List of Possible Reasons for Buying a WWE 2K Video Game (Aided Recall)*	
	Percent of Survey Respondents
	(n = 418)
Mean (average)	7
Median	6

* Based on Question B1. Note, 13 survey respondents did not check any of the reasons listed or said "Don't Know" in response to Question B1. The mean and median are based on those survey respondents who checked one or more items.

As shown in Table 6, survey respondents were most apt to indicate that they bought the relevant WWE 2K video games because of the following reasons: they or a family member likes wrestling (56%), the inclusion of wrestling legends and NXT wrestling stars (43%), and the overall quality of the graphics (43%). Approximately 32% of the survey respondents said that they bought the relevant WWE 2K video games because of the depiction of the wrestlers' face, body, or other aspects of their appearance.

Only two persons (less than 1% of the survey respondents) said the depiction of the wrestlers' appearance was the only reason why they bought the relevant WWE 2K video games, and the average (mean) number of other reasons checked by survey respondents who said the depiction of the wrestlers' face, body, or other aspects of their appearance was a reason for buying these games was 11.

When given a list of reasons and asked to check all that apply, approximately 10% of the survey respondents indicated that the fictitious TJBD feature was a reason for buying the relevant WWE 2K video games. This means that approximately 10% of the survey respondents were guessing when they checked an item.

Table 6 Items Survey Respondents Selected When Given a List of Possible Reasons for Buying a WWE 2K Video Game (Aided Recall)*	
	Percent of Survey Respondents
	<i>(n = 418)</i>
I or a family member likes wrestling	56%
The inclusion of wrestling legends and NXT wrestling stars	43
The overall quality of the graphics	43
The fighting style options	38
The size of the player roster	36
The ability to customize matches (such as win conditions or match rules)	36
The choice of match types	34
The ease of gameplay	34
The price/value	34
The depiction of the wrestlers' movements	32
The depiction of the wrestlers' face, body or other aspects of their appearance	32
The different arenas	31
The backstage action	29
The music	29
The speed of gameplay	26
The selection of movesets	25
The crowd animations	22
The cut scenes	21
The camera angles during gameplay	21
The commentary	20
The reversal system	19
The dialogue options	19
The TJBD feature	10
None of the above	1
Don't know	2

* Based on Question B1. Note, percentages add to more than 100% because some survey respondents selected more than one reason for buying a WWE 2K video game in Question B1.

To eliminate guessing, we subtracted ten percentage points from the percentage who checked each item. As shown in Table 7, 22% of the survey respondents indicated that the depiction of the wrestlers' face, body, or other aspects of their appearance was a reason for buying the relevant WWE 2K video games after accounting for guessing and other sources of "noise."

Table 7 Items Survey Respondents Selected When Given a List of Possible Reasons for Buying a WWE 2K Video Game, After Accounting for Guessing and Other Sources of Noise (Aided Recall)*	
	Percent of Survey Respondents
	<i>(n = 418)</i>
I or a family member likes wrestling	46%
The inclusion of wrestling legends and NXT wrestling stars	33
The overall quality of the graphics	33
The fighting style options	28
The size of the player roster	26
The ability to customize matches (such as win conditions or match rules)	26
The choice of match types	24
The ease of gameplay	24
The price/value	24
The depiction of the wrestlers' movements	22
The depiction of the wrestlers' face, body or other aspects of their appearance	22
The different arenas	21
The backstage action	19
The music	19
The speed of gameplay	16
The selection of movesets	15
The crowd animations	12
The cut scenes	11
The camera angles during gameplay	11
The commentary	10
The reversal system	9
The dialogue options	9

* Based on Question B1. Note, percentages add to more than 100% because some survey respondents selected more than one reason for buying a WWE 2K video game in Question B1.

D. Most Important Reason for Buying a WWE 2K Video Game (Aided Recall)

Next, survey respondents were asked to indicate which of the items listed was their most important reason for buying the relevant WWE 2K video games. As shown in Table 8, the largest percentage (32%) of survey respondents indicated that their most important reason for buying the relevant WWE 2K video games was that they or a family member likes wrestling. Approximately one-in-ten survey respondents said that their most important reason for buying the relevant WWE

2K video games was the overall quality of the games' graphics (10%) or the games' price or value (9%). Only 3% of the survey respondents indicated that their most important reason for buying the relevant WWE 2K video games was the depiction of the wrestlers' face, body or other aspects of their appearance.

Table 8 Most Important Reason for Buying a WWE 2K Video Game (Aided Recall)*	
	Percent of Survey Respondents
	(n = 418)
I or a family member likes wrestling	32%
The overall quality of the graphics	10
The price/value	9
The inclusion of wrestling legends and NXT wrestling stars	8
The fighting style options	6
The size of the player roster	5
The ease of gameplay	3
The ability to customize matches (such as win conditions or match rules)	3
The depiction of the wrestlers' face, body or other aspects of their appearance	3
The cut scenes	2
The choice of match types	2
The dialogue options	2
The depiction of the wrestlers' movements	2
The crowd animations	2
The speed of gameplay	1
The music	1
The selection of movesets	1
The reversal system	1
The backstage action	1
The commentary	<1
The TJBD feature	<1
The different arenas	<1
The camera angles during gameplay	<1
Don't know	1
Not applicable – Did <u>not</u> indicate that any of the above were a reason for buying a WWE 2K video game	3

* Based on Question B2.

E. Top Two Reasons for Buying a WWE 2K Video Game (Aided Recall)

Survey respondents also were asked to indicate which of the reasons listed was their second most important reason for buying the relevant WWE 2K video games. Table 9 summarizes the top two reasons survey respondents gave for buying the relevant WWE 2K video games. When given a list, the largest percentage (40%) of survey respondents indicated that their most important reason or their next most important reason for buying the relevant WWE 2K video games was that they or a family member likes wrestling. Ten percent or more of the survey respondents indicated that each the following were one of their top two reasons for buying the relevant WWE 2K video games: the overall quality of the graphics (17%), the inclusion of wrestling legends and NXT wrestling stars (16%), the price/value (15%), the size of the player roster (12%), the fighting style options (11%), and the ability to customize matches (such as win conditions or match rules) (10%). A smaller percentage of the survey respondents (6%) said that their most important reason or their next most important reason for buying the relevant WWE 2K video games was the depiction of the wrestlers' face, body or other aspects of their appearance.

Only seven persons (approximately 2% of the survey respondents) indicated that the fictitious TJBD feature was one of their top two reasons for buying the relevant WWE 2K video games. This means that a negligible number of survey respondents guessed when asked for their most important reason and their next most important reason for buying the relevant WWE 2K video games.

Table 9 Top Two Reasons for Buying a WWE 2K Video Game (Aided Recall)*	
	Percent of Survey Respondents
	(n = 418)
I or a family member likes wrestling	40%
The overall quality of the graphics	17
The inclusion of wrestling legends and NXT wrestling stars	16
The price/value	15
The size of the player roster	12
The fighting style options	11
The ability to customize matches (such as win conditions or match rules)	10
The ease of gameplay	8
The choice of match types	7
The depiction of the wrestlers' face, body or other aspects of their appearance	6
The cut scenes	5
The depiction of the wrestlers' movements	5
The speed of gameplay	4
The music	4
The dialogue options	3
The different arenas	3
The selection of movesets	3
The crowd animations	3
The reversal system	2
The backstage action	2
The commentary	2
The camera angles during gameplay	2
The TJBD feature	2
Not applicable – Did <u>not</u> indicate that any of the above were a reason for buying a WWE 2K video game	3

* Based on Questions B2 and B3.

F. Whether the Depiction of the Appearance of Particular Wrestlers Was a Reason for Buying a WWE 2K Video Game

Survey respondents who said that the depiction of the wrestlers' face, body or other aspects of their appearance was a reason for buying the relevant WWE 2K video games were asked the following question: "Was the depiction of the appearance of any particular wrestler or wrestlers a reason why you bought the following WWE 2K video game(s): WWE 2K16, WWE 2K17, and/or WWE 2K18?" Approximately 20% of the survey respondents said the depiction of the appearance of particular wrestlers was a reason for buying the relevant WWE 2K video games. (See Table 10.)

Table 10 Whether the Depiction of the Appearance of Any Particular Wrestler or Wrestlers Was a Reason for Buying a WWE 2K Video Game*	
	Percent of Survey Respondents
	<i>(n = 418)</i>
Yes	20%
No	9
Don't know	3
<i>Not applicable – Did <u>not</u> say the depiction of the wrestlers' face, body, or other aspects of their appearance was a reason for buying a WWE 2K video game</i>	68

* Based on Question C1.

These survey respondents were asked the following question: "Which wrestler or wrestlers' depiction was a reason why you bought the following WWE 2K video game(s): WWE 2K16, WWE 2K17, and/or WWE 2K18?"¹⁹ As shown in Table 11, less than 1% of the survey respondents (four persons) said that the depiction of Randy Orton's appearance was one of the reasons why they bought the relevant WWE 2K video games.²⁰

¹⁹ Survey respondents' verbatim responses to the questions summarized in this section are in Appendix I.

²⁰ The four survey respondents who mentioned Randy Orton only did so at the end of the survey after they were prompted to identify the names of particular wrestlers. None of these survey respondents mentioned Randy Orton when they were initially asked their main reason and their other reasons for buying a WWE 2K game. Further, the four survey respondents who identified Randy Orton after prompting did not say that Randy Orton's tattoos were one of the reasons why they bought the relevant WWE 2K games or even mention Randy Orton's tattoos. These survey respondents indicated an average of 14 reasons for buying a WWE 2K game in response to the closed-ended questions.

Table 11 Which Wrestlers' Appearance Was Important to Depict*	
	Percent of Survey Respondents
	(n = 418)
Randy Orton	<1%
Named another wrestler (e.g., Asuka, Finn Balor, Jake Roberts, Kurt Angle, Roman Reigns, Stone Cold Steve Austin)	11
Misc. other comments (e.g., like all the wrestlers, like the graphics/realism)	6
Don't know	3
Not applicable – Did <u>not</u> say the depiction of the appearance of particular wrestlers was a reason for buying a WWE 2K video game	80

* Based on Question C2.

G. What Features or Aspects of Particular Wrestlers' Appearance Were Important to Depict

Survey respondents who said the depiction of a particular wrestler was a reason for buying the relevant WWE 2K video games and who identified one or more wrestlers whose appearance they thought was important to depict were asked the following question: "Were there any particular features or aspects you thought were important to depict of the following wrestler or wrestlers' appearance: [WRESTLERS THE RESPONDENT IDENTIFIED]?" Their responses to this question are summarized in Table 12. Approximately 12% of the survey respondents said it was important to depict particular features or aspects of the appearance of the wrestlers they identified. Yet, only two persons (less than 1% of the survey respondents) said it was important to depict particular features or aspects of Randy Orton's appearance.

Table 12 Whether It Was Important to Depict Particular Features or Aspects of the Appearance of Certain Wrestlers*	
	Percent of Survey Respondents
	(n = 418)
Yes	12%
No	4
Don't know	1
<i>Not applicable – Said "don't know" when asked which wrestlers' depiction was a reason why they bought a WWE 2K video game</i>	3
<i>Not applicable – Did <u>not</u> say the depiction of the appearance of particular wrestlers was a reason for buying a WWE 2K video game</i>	80

* Based on Question C3.

Survey respondents who said that it was important to depict particular features or aspects of the appearance of certain wrestlers were asked the following question: "What features or aspects were important to depict of the following wrestler or wrestlers' appearance: [WRESTLERS THE RESPONDENT IDENTIFIED]?" As shown in Table 13, less than 1% of the survey respondents (three persons) mentioned tattoos. Two survey respondents said it was important to depict Brock Lesnar's tattoos, and one survey respondent said that it was important to depict all wrestlers' facial expressions and tattoos, but did not explicitly refer to Randy Orton.

Only two persons (less than 1% of the survey respondents) said that it was important to depict a particular feature or aspect of Randy Orton's appearance, and neither of these survey respondents said it was important to depict Randy Orton's tattoos. Instead, these survey respondents said it was important to depict Randy Orton's moves or finishing moves.

Table 13 Which Features or Aspects of Particular Wrestlers Were Important to Depict*	
	Percent of Survey Respondents
	(n = 418)
Randy Orton's tattoos	0%
Randy Orton's moves or finishing moves (no mention of tattoos)	<1
Brock Lesnar's tattoos or all wrestlers' tattoos	<1
Other responses, no mention of Randy Orton or tattoos (e.g., Daniel Bryan's beard, Stone Cold Steve Austin's facial features, Kurt Angle's hair and face)	10
Don't know	1
Not applicable – Did <u>not</u> say it was important to depict particular features or aspects of certain wrestlers' appearance	88

* Based on Questions C3 and C4.

IV. Conclusions

The Jay Survey was performed according to accepted survey standards and in conformity with the guidelines discussed in the *Federal Manual for Complex Litigation*, 4th Ed. §11.493 (2004) and the *Reference Guide on Survey Research, Federal Reference Manual on Scientific Evidence*, 3rd Ed. (2011). Based on the overall design and execution of the Jay Survey, it provides representative and reliable information regarding individuals age 16 to 55 who bought the relevant WWE 2K video games. In my opinion, the Jay Survey strongly supports the conclusions that a) consumers bought the relevant WWE 2K video games for numerous reasons, principally that they like WWE or wrestling, b) no consumers bought the relevant WWE 2K video games for Randy Orton's tattoos, let alone the tattoos at issue in this case, and c) there is no link between the sales of the WWE 2K video games and their depiction of Randy Orton's tattoos.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 7th day of January at Redwood City, California.

E. Deborah Jay, Ph.D.

Appendix A

E. Deborah Jay, Ph.D. Deposition and Trial Testimony During the Past Four Years

E. Deborah Jay, Ph.D.
Deposition and Trial Testimony During the Past Four Years

1. *RXD Media, LLC v. IP Application Development LLC and Apple, Inc.* (United States District Court, Eastern District of Virginia)
Case No. 1:18-CV-486-LO-TCB
2. *Erik M. Underwood v. Bank of America* (United States District Court, District of Colorado)
Case No. 1:18-CV-02329-WYD
3. *Solid 21, Inc. v. Hublot of America* (United States District Court, Central District of California)
Case No. 2:11-CV-00468-DMG-JC
4. *Saxon Glass Technologies, Inc. v. Apple, Inc.* (United States District Court, Western District of New York)
Case No. 1:15-CV-00581-EAW-HKS
5. *VirnetX, Inc. and Leidos v. Apple, Inc.* (United States District Court, Eastern District of Texas)
Case No. 6:12-CV-00855-RWS
6. *Lauren Hall v. Welch Foods, Inc. and The Promotion In Motion Companies* (United States District Court, Eastern District of New York)
Case No. 1:17-CV-05828-MKB-VMS
7. *Luci Bags LLC v. Younique LLC* (United States District Court, Eastern District of Texas)
Case No. 4:17-CV-377
8. *The Kroger Co. v. Lidl* (United States District Court, Eastern District of Virginia)
Case No. 3:17-CV-00480-JAG
9. *Pom Wonderful LLC v. The Coca-Cola Company* (United States District Court, Central District of California)
Case No. 2:08-CV-06237-SJO-FMO
10. *VirnetX, Inc. and Science Applications Int'l Corp. v. Apple, Inc.* (United States District Court, Eastern District of Texas)
Case No. 6:13-CV-00855
11. *Denis George Mahan P/K/A Deney Terrio v. Hasbro, Inc. and Hasbro Studios, LLC.* (United States District Court, Middle District of Florida)
Case No. 6:15-CV-00188-RBD-GJK
12. *Twentieth Century Fox Television and Fox Broadcasting Co. v. Empire Distribution, Inc.* (United States District Court, Central District of California)
Case No. 2:15-CV-02158-PA-FFM

13. *Linx Bracelets, Inc. v. Origami Owl, LLC* (United States District Court, Central District of California)
Case No. 2:14-CV-06799-SVW (JEM)
14. *In the Matter of Certain Footwear Products* (United States International Trade Commission)
Investigation No. 337-TA-936
15. *Pinterest, Inc. v. Pintrips, Inc.* (United States District Court, Northern District of California)
Case No. 13-4608 (HSG)

Appendix B

E. Deborah Jay, Ph.D. Resume and Publications and Presentations Since 2009

- *Resume*
- *Publications and Presentations Since 2009*

E. Deborah Jay, Ph.D.

Current Position

Principal/Founder, Jay Survey Strategies LLC
2000 Broadway St., Suite 143
Redwood City, CA 94063
(415) 533-0020
deborahjay@jaysurveystrategies.com

Jay Survey Strategies is a research agency primarily involved in conceptualizing, planning, executing, and reporting on custom-designed opinion studies.

Technical Skills

Expert in research design and all phases of survey methodology – questionnaire design, sampling, data collection, data processing, qualitative and quantitative data analysis, with more than 40 years' experience conducting large-scale surveys of all types.

Research Experience

Branding, marketing and advertising research:

Responsible for branding, marketing, and advertising research relating to services and products in a variety of industries (*e.g.*, health, education, technology, communications, finance, transportation, and wholesale/retail trade).

Public policy studies:

Responsible for policy analyses and evaluations concerning medical assistance programs (*e.g.*, Medicaid, Medicare, and county health services), public health campaigns (*e.g.*, concerning tobacco use, diet and nutrition), educational programs (*e.g.*, for disadvantaged students and students with disabilities), general assistance programs, and other public issues (*e.g.*, child care, access to telephone service, the environment).

Litigation support:

Court-qualified expert in survey methodology; responsible for conducting and evaluating surveys for legal cases involving a variety of issues (*e.g.*, trademark, copyright and patent infringement, false advertising, right of publicity/false endorsement, defamation, exempt/nonexempt employment classification, off-the-clock work and other wage and hour issues, employment discrimination, product liability, business conduct, natural resources valuation, change of venue) and providing expert testimony in proceedings before state and federal courts and other tribunals such as the International Trade Commission and the U.S. Patent and Trademark Office.

Professional Experience Before Founding Jay Survey Strategies

President and CEO, Field Research Corporation, San Francisco, CA.

Program Director and Senior Research Social Scientist, SRI International (formerly Stanford Research Institute), Menlo Park, CA.

Manager, Management Consulting Division, KPMG Peat Marwick, San Francisco, CA.

Public Policy Analyst/Survey Specialist, Teknekron, Berkeley, CA.

Research Associate, Survey Research Center, University of California, Berkeley, CA.

Education

Ph.D. in political science, University of California at Berkeley (1981).

M.A. in political science, University of California at Berkeley (1973).

B.A. in psychology/political science, University of California at Los Angeles (1972, *magna cum laude*, Phi Beta Kappa).

Professional Associations

Council of American Survey Research Organizations (CASRO):

Board of Directors (1995-2001); Chair (1999); Chair-Elect (1998); Secretary (1997); Chair, Committee on Survey Research Quality (1997-1998); Chair, Committee on Standards and Ethics (1995-1996).

American Association for Public Opinion Research (AAPOR):

Editorial Board, Survey Practice (2007-2017); Advisory Council, Public Opinion Quarterly (2008-2012); Executive Council (2001-2003); Standards Chair (2002-2003); Associate Standards Chair (2001-2002); Standards Committee Member (1992); Past President, Pacific Chapter (1989); Appointed to numerous ad hoc committees (e.g., 2009 Standards Review Committee, 2010 Survey-Based Legal Evidence Committee).

International Trademark Association (INTA):

Editorial Board, Trademark Reporter (2012-present); Brand Names Education Committee (2004).

Other Directorships

Board of Directors, Roper Center for Public Opinion Research (housed at the University of Connecticut) (1997-2003); Member, Committee on Data Acquisitions & Standards (2001-2003).

Board of Directors, Bay Area Council (1991-2009).

Board of Directors, Bay Area Economic Forum (1996-2001).

San Francisco Municipal Fiscal Advisory Committee to the Mayor (Committee Member, 1991-2001; Executive Committee Member, 1998-2001).

Teaching Experience

Lecturer, New York City Bar Association, Trademarks and Unfair Competition Committee (New York, June 2015).

Faculty member, 2015 Trademark Office Comes to California, Continuing Legal Education Seminars sponsored by The State Bar of California Intellectual Property Law Section (Los Angeles and San Francisco, 2015).

Faculty member, IP BYTES: Hot Topics in Trademark Law, Continuing Legal Education Seminar sponsored by the Intellectual Property Section of the Bar Association of San Francisco (2014).

Lecturer, American Intellectual Property Law Association, Annual Conference (Washington DC, 2012).

Faculty member, Current Trends in Wage & Hour Litigation: Economic, Legal and Statistical Issues, Continuing Legal Education Seminar sponsored by ERS Group (San Francisco, 2006 and 2009; New York, 2007; Santa Monica, 2006, 2007, 2009, 2011 and 2012).

Lecturer, New York City Bar Association, Trademark and Copyright Committee (New York, 2011).

Faculty member, 2010 IP Damages Institute sponsored by the CalCPA Education Foundation (Los Angeles, 2010).

Faculty member, The State Bar of California 35th Annual Intellectual Property Institute (Napa, 2010).

Faculty member, Florida Bar Intellectual Property Law Symposium (Tampa, 2010).

Lecturer, Marketing Research Council (New York, 2010).

Lecturer, Surveys in Trademark Prosecution and Litigation, Continuing Legal Education Seminar and Roundtable hosted by Graham and Dunn for the International Trademark Association (Seattle, 2009).

Guest lecturer, American Studies Program, University of California at Berkeley (1999 and 2008).

Lecturer, San Francisco Intellectual Property Law Association. (San Francisco, 2006).

Faculty member, Advertising and Marketing Law, Continuing Legal Education Seminar sponsored by Insight Information (Chicago, 2006).

Faculty member, 2005 Advertising and Trademark Seminar, sponsored by Kirkland and Ellis LLP (Chicago, 2005).

Faculty member, Trademark Portfolio Acquisition and Protection, Continuing Legal Education Seminar sponsored by Law Seminars International (San Diego, 2004).

Faculty member, Trademark Dilution & Damages, Intellectual Property Section, The Barristers Club of San Francisco (2003).

Guest lecturer, Intellectual Property Seminar, Boalt Law School, University of California at Berkeley (1999-2003).

Faculty member, Basics of Trademark Litigation, Continuing Legal Education Seminar sponsored by the International Trademark Association (Washington DC, 2001).

Guest lecturer at the graduate and undergraduate levels, Marketing Research Seminars, Haas School of Business, University of California at Berkeley (1995-2000).

Faculty member, Forensics Research Conference, Council of American Survey Research Organizations (New York, 2000).

Faculty member, Employment Discrimination: Statistical Evidence and Economic Exposure, Continuing Legal Education Seminar sponsored by ERS Group (Atlanta, Chicago, San Francisco, 1996-2000).

Faculty member, Advertising Law for the Next Century in California, Continuing Legal Education Seminar sponsored by Lorman Education Services (San Francisco, 1999).

Guest lecturer, Institute for Governmental Studies, University of California at Berkeley (1999).

Faculty member, National Advertising Division of the Council of Better Business Bureaus, Workshop IX (San Francisco, 1998).

Lecturer on public opinion research, Political Science Department, University of California at Davis (1978).

E. Deborah Jay, Ph.D.
Publications and Presentations Since 2009
(Author or Co-author)

- "Trademark Survey Evidence: Getting Through the Gate." Presentation at the 2018 Perkins Coie Intellectual Property Group Retreat (Denver, October 2018).
- "Targeting Trademark Surveys." Presentation to the New York City Bar Association Trademarks and Unfair Competition Committee (New York, June 2015).
- "Mark My Words: Contemporary Trademark Surveys." Presentation for the 2015 Trademark Office Comes to California, Continuing Legal Education Seminars sponsored by The State Bar of California Intellectual Property Law Section (Los Angeles and San Francisco, April 2015).
- "He Who Steals My Good Name: Likelihood-of-Confusion Surveys in TTAB Proceedings." 104 Trademark Reporter 1141 (2014).
- "Millennium Falconry: Navigating the Hyperspace of 21st Century Trademark Surveys." Presentation for the IP BYTES: Hot Topics in Trademark Law seminar sponsored by the Intellectual Property Section of the Bar Association of San Francisco (July 2014).
- "Ten Truths of False Advertising Surveys." 103 Trademark Reporter 1116 (2013).
- "Polling Consumers: Surveys in Advertising Cases." Presentation at the 2012 American Intellectual Property Law (AIPLA) Annual Conference. (Washington DC, October 2012).
- "Genericness Surveys in Trademark Disputes: Under the Gavel." In Trademark and Deceptive Advertising Surveys: Law, Science, and Design, edited by Shari Seidman Diamond and Jerre B. Swann (Chicago, IL: American Bar Association, 2012).
- "He Who Steals My Good Name: The Use of Survey Evidence in Intellectual Property Cases." Presentation at the New York City Bar Association Trademark and Copyright Committee (New York, December 2011).
- "Using Surveys to Assess Damages in Intellectual Property Disputes." Presentation at the 2010 IP Damages Institute sponsored by the CalCPA Education Foundation (Los Angeles, November 2010).
- "Wine, Women & Song: The Use of Survey Evidence in the Gallo, Princess Diana and Napster Cases." Presentation at The State Bar of California 35th Annual Intellectual Property Institute (Napa, October 2010).
- "Asked and Answered: Surveys in Trademark and Other Intellectual Property Disputes." Presentation at the Florida Bar Intellectual Property Law Symposium (Tampa, March 2010).

"Surveys as Scientific Evidence: Anatomy of a Survey in Court." Presentation for the Marketing Research Council (New York, March 2010).

"Genericness Surveys in Trademark Disputes: Evolution of Species." 99 Trademark Reporter. 1118 (2009).

"Survey Evidence in Trademark and Other Intellectual Property Disputes." Presentation for a seminar and roundtable hosted by Graham and Dunn for the International Trademark Association (Seattle, January 2009).